

## Section by Section Explanation of the Michigan Jobs and Investment Act

Section	Purpose	What it Will Accomplish	Details
Sec. 101	Act title		Provides that the amendatory act adding a new statutory chapter be known as the "Michigan Jobs and Investment Act."
Sec. 102	Legislative finding	<ul style="list-style-type: none"> <li>Helps protect against lawsuit challenging status as value added tax. Such a lawsuit could reduce the number of out of state businesses subject to the tax.</li> </ul>	Provides legislative finding that reducing the tax rate, broadening the base and increasing reliance on positive business income improves the measurement of value added, and maintains the tax as a modified value added tax.
Sec. 103	Definitions	<ul style="list-style-type: none"> <li>Decouples from new federal deduction for production activities, effective this year.</li> </ul>	<p>"Adjusted gross income" is defined to be the same as adjusted business income, used in the calculation of the small business credit.</p> <p>"Business income" is defined to exclude a new federal deduction for domestic production activities.</p> <p>"Client" means an entity whose employment operations are managed by a PEO.</p> <p>"Corporation" means a taxpayer that is required, or has elected, to file as a corporation for federal income tax purposes.</p> <p>"Professional employer organization" is defined substantially the same as current law.</p> <p>"Temporary employee" is an employee for whom both of the following are true: whose wages and other compensation are determined exclusively by the entity supplying the employee; and who is employed by the entity providing the employee primarily for meeting temporary or seasonal employment needs of its customers.</p>
Sec. 104	Rate reduction	<ul style="list-style-type: none"> <li>Cuts tax rate 37 percent for all standard filers.</li> </ul>	For tax years beginning on or after January 1, 2006, the rate for standard filers will be reduced from 1.9 percent to 1.2 percent.

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Sec. 105	Apportionment	<ul style="list-style-type: none"> <li>Removes disincentive to locate jobs or investment in Michigan by making tax liability the same regardless of the location of jobs and property.</li> <li>Removes any tax penalty for locating headquarters in Michigan.</li> </ul>	For tax years beginning on or after January 1, 2006, the tax base will be apportioned solely on the percentage of sales in Michigan.
Sec. 106	Personal property tax credit	<ul style="list-style-type: none"> <li>Makes Michigan more competitive in manufacturing location decisions, by lowering personal property tax on their mobile capital.</li> <li>Lowers tax burden on personal property used in research and development.</li> </ul>	<p>For tax years beginning on or after January 1, 2006, an industrial processor or research and development company may claim a credit for 35 percent of taxes paid on personal property used for industrial processing, including research and experimental activities that are industrial processing.</p> <p>Industrial processors whose only significant business activity is industrial processing will calculate the credit on the basis of 90 percent of the total personal property taxes paid. Other industrial processors and research and development companies will claim the credit based on property used for industrial processing or research or experimental activities.</p> <p>The section keys off definitions of industrial processor, industrial processing and research or experimental activities found in the sales tax act:</p> <p><i>"Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. A public utility would not be considered an industrial processor.</i></p> <p><i>"Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. It would also include receiving and storage of materials and</i></p>

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Sec. 106 (cont.)			<p><i>use at a fixed location for preservation, maintenance, warehousing or shipping of a finished good.</i></p> <p><i>“Research or experimental activity” is activity incident to the development, discovery or modification of a product or a product related process. It also includes activity necessary for a product to satisfy a government standard or receive government approval.</i></p> <p><i>“Research and development company” is a company that engages <u>exclusively</u> in research or experimental activity. Activities of affiliates or entities under common control are considered when applying this test</i></p> <p>Taxes paid on abated property would also be eligible for the credit. The credit would be refundable.</p>
Sec. 107	Research and development credit	<ul style="list-style-type: none"> <li>• Provide a substantial tax incentive for pure research and development companies.</li> </ul>	<p>For tax years beginning on or after January 1, 2006, provides a credit for a research and development company equal to 1.2 percent of compensation that would be included in the tax base for services performed in the state that are research or experimental activities.</p> <p>“Research and development company” and “research or experimental activities” have the same meaning as they do in section 155. The credit must be claimed after application of the personal property tax credit provided by section 155 and is nonrefundable.</p>
Sec. 108	Small business credit changes	<ul style="list-style-type: none"> <li>• Cuts rate for small businesses using alternative calculation for 40 percent.</li> <li>• Makes eligibility standards for small business credit apply uniformly to all types of business organizations and eliminates favorable treatment of small businesses with an out-of-state affiliate.</li> </ul>	<p>Reenacts section 36, the small business alternative tax and, for tax years beginning on or after January 1, 2006, reduces the rate for the alternative small business tax calculation from 2.0 percent to 1.2 percent. Provides that limited liability companies are subject to the same compensation limits as other businesses. Provides that affiliates of out-of-state companies are subject to the same combined gross receipts test as affiliates of in-state companies.</p>

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Sec. 109	Additional profits weighting	<ul style="list-style-type: none"> <li>Makes the tax more profit sensitive, by providing additional weighting of profits for businesses filing as corporations.</li> </ul>	<p>For tax years beginning on or after January 1, 2006, provides an addition to the tax base equal to two times the sum of the following amounts, if the sum is greater than zero:</p> <ol style="list-style-type: none"> <li>Business income, reduced by the amount of dividends, including foreign dividends that can be deducted in computing the tax base.</li> <li>The add back of the net operating loss carry forward.</li> </ol> <p><b>This addition is required only of businesses filing as a corporation for federal income tax purposes and does not apply to partnerships, LLCs filing as partnerships, S-corporations, or sole proprietorships.</b></p>
Sec. 110	Defines tax treatment of compensation paid by Professional Employer Organizations (PEOs)	<ul style="list-style-type: none"> <li>Eliminates use of professional employer organizations to avoid eligibility rules and, as a result, obtain small business credit.</li> </ul>	<p>For tax years beginning on or after January 1, 2006, provides that officer compensation paid by a PEO to a client's officers is included in the tax base of the client. Provides that other employee compensation paid by a PEO with more than 1 percent common ownership with a client is included in the tax base of the client. Client and PEO may elect not to be subject to this provision in which case compensation is included in the tax base of the PEO and neither entity may claim the small business credit.</p>
Sec. 111	Revise insurance tax	<ul style="list-style-type: none"> <li>Brings level of insurance taxation from fourth lowest nationally to near the national average.</li> </ul>	<p>For tax years beginning on or after January 1, 2006, each insurance company will pay a tax equal to 2.0 percent of gross direct premiums in Michigan, excluding premiums on policies not taken and returned premiums on cancelled policies, and excluding receipts from the sale of annuities and receipts on reinsurance premiums, when the tax has been paid on the original premium.</p> <p>Foreign (out-of-state) insurers will pay the greater of this tax or the retaliatory tax levied under the insurance code. Insurance company tax returns continue to be public.</p>

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Sec. 112	Severability related to decision in <i>Cuno v. Daimler-Chrysler</i>	<ul style="list-style-type: none"> <li>Protects tax from lawsuits attacking credits and deductions, based on Sixth Circuit decision in <i>Cuno v. Daimler-Chrysler</i>.</li> </ul>	Provides that if a final order of a court determines that a credit, deduction or exemption limited to Michigan activity, is found unconstitutional, then that credit, deduction or exemption is severed for each year to which the ruling applies, and the rest of the provisions of the act remain in effect.
Sec. 113	Conditions relating to applicability of more limited nexus standard	<ul style="list-style-type: none"> <li>Protects against severe revenue loss if courts decide that new tax structure is subject to more restrictive federal nexus standards currently applicable to an income tax.</li> </ul>	<p>Provides that if a final order of a court determines that the provisions of Public Law 86-272 are applicable to the SBT after application Michigan Jobs and Investment Act, then section 158 (the profits weighting section) is severed and, subject to PA 86-272, a separate levy on corporations equal to 2.4 % of the sum of business income and net operating loss carry forward is imposed on businesses filing as corporations.</p> <p>The new sales factor and current consolidation rules would apply. Currently, Public Law 86-272 restricts the ability of the states to collect income taxes from certain corporations, based on their presence within the state, and is not applicable to the SBT.</p>
Sec. 114	Elimination of certain deductions, credits, and superseded provisions	<ul style="list-style-type: none"> <li>Creates a broader base tax, in conjunction with lower rate.</li> <li>Removes rate reduction trigger.</li> </ul>	<p>For tax years beginning on or after January 1, 2006, the following provisions would no longer be effective:</p> <ul style="list-style-type: none"> <li>The excess compensation deduction – Sec. 4(4)</li> <li>The gross receipts deduction – Sec. 4(4)</li> <li>The current definition of business income – Sec. 3(3)</li> <li>The current insurance tax provisions – Secs. 22a – 22f</li> <li>The current rate provisions – Sec. 31(2), (4) and (5)</li> <li>The current section related to the small business alternative tax – Sec. 36</li> <li>The unincorporated business credit – Sec. 37</li> <li>The credit for 5 percent of state utility property taxes paid – Sec. 39</li> <li>The former tax year apportionment section – Sec. 45</li> <li>The current apportionment section – Sec. 45a</li> </ul>
Sec. 115	Tax years	Prevents delay of tax cuts for certain unusually situated	Provides that if a taxpayer has a tax year that begins not



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	beginning in the last week of December	taxpayers.	more than 7 days before December 31 of any year, the taxpayer is considered to have a tax year beginning after December 31 of that year. This provision prevents a delay of the rate reductions and credits provided by this chapter.
Enacting Sec. 1	Repealer	Continues a state business tax beyond current scheduled repeal.	Repeals enacting section 1 of 2002 P.A. 531, which repealed the SBT for tax years beginning after December 31, 2009.
Enacting Sec. 2	Repealer		Repeals enacting section 3 of 1999 P.A. 115, which repeals SBT when rate is reduced to 0.0%.
Enacting Sec. 3	Tie-bar	<p>Preserves elements of package as a single package.</p> <p>WPW case is addressed in the tie-barred companion bill. The bill will restore the legislatively intended equality of treatment under Proposal A for commercial property. Originally the law allowed for reductions in commercial property values caused by reductions in occupancy to be excluded from calculation of assessment cap (allowing taxable values to float downward) so long as additions caused by increases in occupancy were also not limited by the cap. Supreme Court prohibited the exclusion of these additions from the assessment cap computation but was silent on the provision dealing with the reduction. The bill would make the corresponding change to prohibit reductions in occupancy from lowering taxable values unless a decrease in the SEV of the property requires a reduction.</p>	Tie-bar to bill addressing WPW case.

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